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7-15-52

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December 15, 1952  
ARIZONA ATTORNEY GENERAL

Mr. William A. Scanland  
Pinal County Attorney  
Florence, Arizona

Att: T. J. Mahoney  
Deputy County Attorney

N.B.

Dear Sir:

This will acknowledge your letter of November 29, 1952 in which you state you have a communication from the County Assessor in which he quotes his duties in part as set forth in Section 73-402 ACA 1939 and poses the following problem with the request for an opinion on the same:

"In this county there are three classes of personal property which I would like to assess, but which are questionable as to the power or authority of the assessor in making a legal assessment. I refer to heavy equipment (Construction, contracting and tillage), crop dusting airplanes and mechanical custom cotton picking machines. The tillage equipment usually comes into the County around January first, and is gone by the time all the crops are planted. The dusting planes come in the county usually after July first, and leave before the first of the year. The picking machines come in after the crop begins to mature and are mostly gone by the first of the year, and those remaining leave soon after the first of the year.

Will you kindly advise me if (1) the County Assessor has the power to assess such equipment after the assessing period (First Monday in January to May 1 of each year). (2) Could I make such an assessment if the owner could show a tax receipt showing payment of taxes in another state on such equipment, or would the assessment be void under the constitutional provision against double assessment."

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Packard Contracting Company vs Roberts, 70 Ariz. 411; 222 P2d. 791 deals in part with the question presented by you and the following are excerpts from the syllabus:

"1. Counties

The statutes providing for taxation of personalty of any person not owning realty within county of \$200 value were intended to provide a better method of reaching unsecured personal property for purposes of taxation, and to treat taxation of unsecured personal property differently than secured personal property or real property, and to change manner of assessing and collecting taxes on unsecured personal property.

2. Taxation

The statute dealing with tax liens applies only to real property and secured personal property and not to unsecured personal property.

3. Taxation

Where statute governing matter of tax liens against unsecured personalty is silent as to when such tax lien attaches, the general law of the subject will be looked to to ascertain that the tax lien attaches as of the time that amount of tax is ascertained and assessed.

4. Counties

The statutes relating to taxation of unsecured personal property do not require such property to be in the county on the first day of the year in order for the county to tax such property.

5. Counties

A road construction corporation's machinery and equipment which was constantly moved from county to county as needed on various construc-

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tion jobs throughout the state was 'transient property used in business or commerce' within state within statute authorizing taxation of such property wherever found.

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#### 9. Counties

County could assess unsecured personal property tax against road construction corporation's machinery and equipment which was moved into county without having been taxed in another county."

Sections 73-1820 to 73-1835 incl. ACA 1939, as amended, provide for personal property assessment and collection of tax including the procedure of the filing of objections to and the adjustment of the tax on the personal property assessed.

Sections 73-1820 and 73-1833 directly relate to the questions presented by you and are quoted in their entirety.

"73-1820. Assessment of certain personal property.--The county assessor when he assesses the personal property of any person not owning real estate within the county of two hundred dollars (\$200) value, shall enter said assessment on a tax roll provided for such purpose, to be known as the unsecured personal property tax roll, showing the name and residence of the person owning such personal property, or having the same in his possession and returning said property for taxation, if the same be known, a description of said property sufficient to identify the same together with the location of said property and the rate of taxation levied against said property. If the name of the owner of said property be not known said property shall nevertheless be listed and assessed and entered upon said tax roll to 'unknown owner'. Said tax roll shall provide proper columns for the extension of the tax levied upon said property.

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The assessor shall have all of the power and authority granted county assessors under section 73-402 Arizona Code 1939 together with all other power and authority granted to county assessors under any law of the state of Arizona and not in conflict with this act. The duty of the county assessor to assess such property shall continue throughout the year. (Emphasis supplied)

"73-1833. Property in transit.--Taxes on personal property in transit through a county shall be collected where the owner is domiciled provided, however, this section shall not apply to transient live stock as defined in section 73-408, Arizona Code of 1939, and provided further that transient property which is used in business or commerce within the state shall be assessed where found." (Emphasis supplied)

Section 450 in 51 Am. Jur. states in part as follows:

"As a matter of constitutional power, a state which otherwise has the right to tax personal property is not deprived thereof by the fact that the property is subject to taxation, or that a tax has actually been paid thereon, in another state for the same period. While the principle 'mobilia sequuntur personam' still expresses the prima facie rule of situs for taxation purposes of personal property, the right of the state in which personal property, whether tangible or intangible, has an actual or business situs to assess and collect taxes thereon is no longer open to question, and the mere fact that personal property is subject to, or has actually been subjected to the payment of, taxes at the domicile of the owner is not a bar to its taxation in another state where it has an actual situs.\* \* \* \* \*

In answer to question number 1, it is the opinion of this office that the County Assessor has the power to assess such

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equipment after the so called assessing period (First Monday in January to May 1 of each year).

It is the further opinion of this office that the County Assessor can make such an assessment notwithstanding the fact that the owner has a tax receipt showing payment of taxes in another state on such equipment and that such assessment would be valid in the State of Arizona.

Very truly yours,

FRED O. WILSON  
Attorney General

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NEWMAN W. WHITE  
Assistant Attorney General